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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,714	01/09/2001	Raymond Rudolph Spivey	7148	8365

7590 03/11/2003

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EXAMINER

NOLAND, KENNETH W

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 03/11/2003

#15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/757,714

Applicant(s)

SPIVEY, RAYMOND RUDOLPH

Examiner

Kenneth w Noland

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-11, 13-19, 21-28, 30-37, 39-47 and 52 is/are rejected.
- 7) ☒ Claim(s) 5, 12, 20, 29, 38 and 48-51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. Applicant's amendment filed on Jan. 16, 2003 has been received and an Office Action is set forth as follows:

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

3. (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
4. Claims 1-4, 6-11, 13-19, 21-28, 30-37, 39-47 and 52 are rejected under 35 U.S.C. 102(e) as being anticipated by Bates.

The earlier filing data relied upon in Bates is the date (Dec. 12, 2000) from the provisional application no. 60/255,543 taken from the 'Related U.S. Application Data'.

Bates discloses the folded carton in figure 2 to carry a plurality of containers in two rows. The top, bottom panels are foldably attached to side panels, as by glue (Fig. 3). The exiting end has a tear line 24 (Fig. 1) at the top panel and tear lines 30 at the side panels so that a dispenser opening is formed and remains attached to the carton to form a basket (20) to catch containers. Note in figures 2 and 3 the bottom portion (80) that remain attach to not only provide inherent structural integrity but to inhibit a container from exiting the carton. The bottom portion (80) has a height that is less than the diameter of a container (see pg. 3, lines 25-35). In regard to claims 2, 14, 17, 26, 31, 34 and 44 note the use of a 'finger' flap (26) in fig. 1 at the top wall to provide a means to initiate the top tear line. In regard to claims 8 and 25 the top tear line is

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considered 'generally' parallel to the exiting end of the carton. Finally, in regard to claims 43-47 and 52, note in either figures 3 or 6 the top (62 or 162), sides (66 or 166, 46 or 164) and bottom (68 or 168 a, b) having the end flaps, as shown. Note ^again the finger flap (26 or 214) and in regard to claim 52 that the tear lines (30 or 130) run from the top to the side panels and are considered to run substantially parallel to the exiting end of the carton.

5. Claims 5, 12, 20, 29, 38 and 48-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The above rejection under 35 USC 102(e) can be overcome under the guidelines of 37 CFR 1.131 (see MPEP 715). The essential thing to be shown under 37 CFR 1.131 is priority of invention by satisfactory evidence of facts, not conclusions. The various facts presented are noted in MPEP 715.07. The affidavits or declaration and facts (exhibits) must clearly explain which facts or data the applicant is relying on to show completion of the invention prior to the particular date (Dec. 12, 2000). Note also in MPEP 715.07 the three ways to show prior invention and where diligence is needed to also be presented (see 715.07(a)).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Noland whose telephone number is (703) 308-3200. Examiner Noland can normally be reached on Monday to Thursday from 6:30 A.M. to 5:30 P.M. Eastern Time.

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Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-2168. Fax numbers for Official Papers are as follows: (703) 305-3597 and (703) 305-7687.

Noland/kl
March 7, 2003

Kenneth W. Noland 3/10/03
KENNETH W. NOLAND
PRIMARY EXAMINER
A.U. 3653